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PCT

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)



14 JAN 2005

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| Applicant's or agent's file reference 11026P1 WO/JCM | FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416) | |
| International application No. PCT/GB 03/02916 | International filing date (day/month/year) 08.07.2003 | Priority date (day/month/year) 17.07.2002 |
| International Patent Classification (IPC) or both national classification and IPC A61M15/08 | | |
| Applicant RECKITT BENCKISER (UK) LIMITED ET AL. | | |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.
 - ☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 1 sheets.

3. This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

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|---|--|
| Date of submission of the demand 17.02.2004 | Date of completion of this report 24.08.2004 |
| Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465 | Authorized Officer Valfort, C Telephone No. +49 89 2399-2352  |

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/GB 03/02916

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-6 as originally filed

Claims, Numbers

1-4 filed with telefax on 09.08.2004

Drawings, Sheets

1/1 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|-------|
| Novelty (N) | Yes: Claims | 1-4 |
| | No: Claims | |
| Inventive step (IS) | Yes: Claims | 2 |
| | No: Claims | 1,3-4 |
| Industrial applicability (IA) | Yes: Claims | 1-4 |
| | No: Claims | |

2. Citations and explanations

see separate sheet

Reference is made to the following documents:

D1: FR-A-1146256
D2: BE-A-472694
D3: WO-A-0211800
D4: DE-A-19703526

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. D1 discloses a portable device for dispensing a fragrance (see page 1, left col. lines 1-5) comprising:
 - a housing (1,2, fig.1) containing a fragrance element (see page 2, lines 28-35);
 - at least one aperture (6a, 6b fig.1) in a side of the housing in the vicinity of one end of the housing to release the fragrance from the housing (see fig.1, and page 2 left col. last paragraph);
 - and means (3, fig.1) to selectively open and close the aperture.
 - the one end being shaped to abut the lower end of the users nose such that in use the fragrance can be inhaled through the aperture to the nasal passage of the user (item 5, fig.1 and page 2 3rd paragraph). Moreover the cylindrical part 5 is considered as a kind of recess which fits the septum of the user.
- 1.1 Therefore, the subject-matter of claim 1 differs from the device of D1 in that the means to selectively open and close the aperture is a lid pivotally attached to the housing. Thus the subject-matter of claim 1 is novel (Article 33(2) PCT).
2. The subject-matter of claim 1,3-4 is not considered to be inventive for the following reasons (Article 33(3) PCT) :

In D1, the cover is not pivotally attached to the housing. The fact of having a separate cover is cumbersome, and on top of that the cover may be lost. The problem to be solved by the invention can therefore be regarded as how to improve the cover arrangement of D1 in order to minimise the above problems. The skilled person would use his general knowledge think of putting an hinged cover as one obvious manner to

solve the above problems (Anyway, hinged covers in inhalers are well known see for example D3 fig.21-22, the fields of inhalers is considered as a neighbouring field to the one of devices for dispensing fragrances). Consequently, the subject-matter of claim 1 and 4 is not considered to involve an inventive step in view of D1 taken with the knowledge of the skilled person.

- 2.1 Moreover, in D1 the inhaler is said to have "briquet" form (which actually leads the skilled person to the field of briquets), it is well known from the skilled person that "zippo briquets" have a hinged cover which makes a click when opening/closing it. Therefore it would be obvious for the skilled person wanting to improve the device of D1, to provide the device with a hinged cover as known from the "Zippo briquets" thus arriving at the subject-matter of claim 1, 3 and 4. (Anyway, hinged covers in inhalers are well known see for example D3 fig.21-22) .
3. The subject-matter of claim 2 further differs from the device of D1 in that the lid in its open position rest against the side of the housing adjacent to the aperture such that in use the lid prevents the aperture of the device from coming into contact with the top lip of the user.
- 3.1 The above feature solve the problem avoiding irritation from the skin of the user by direct contact with the fragrance. The fact of using the hinged cover which is designed such that it rest against the side of the housing adjacent to the aperture, as both a protection for closing the device and protecting the user in use is considered to involve an inventive step (Article 33(3) PCT). Indeed, if the fact of providing a hinged cover for closing/opening the device in a more convenient way is obvious for the skilled person (see point 2), providing a hinged cover which further protects the user in use cannot be derived from the available documents as well as the knowledge of the skilled person. In D1 said cover has no protective function when the device is used.
4. The closest prior art (D1) has not been identified as required by Rule 5(a)(ii) PCT. Furthermore, the independent claims are not in the two-part form as required by Rule 6.3(b) PCT. Moreover, the claims do not include reference signs in parentheses as required by Rule 6.2(b) PCT.
5. The description is not in conformity with the claims as required by Rule 5.1(a)(iii)

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/GB 03/02916

PCT.

CLAIMS

1. A portable device for dispensing a fragrance
 5 comprising:
 a housing containing a fragrance element;
 at least one aperture in a side of the housing in
 the vicinity of one end of the housing to release the
 fragrance from the housing;
 10 and means to selectively open and close the
 aperture which is a lid pivotally attached to the
 housing wherein the lid is movable from a closed
 position where the lid covers the aperture to seal the
 device to an open position where the aperture is
 15 uncovered;
 the one end being shaped to abut the lower end
 of a users nose such that in use the fragrance can be
 inhaled through the aperture to the nasal passage of
 the user.
 20
2. A device as claimed in claim 1 wherein the lid in
 its open position rests against the side of the
 housing adjacent to the aperture such that in use the
 lid prevents the aperture of the device from coming
 25 into contact with the top lip of the user.
3. A device as claimed in claim 1 or 2 wherein the
 one end has a catch to provide an audible "click" as
 the lid passes over the catch.
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4. A device as claimed in any one of the preceding
 claims wherein the one end has a central recess to
 accommodate the septum of the user.
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